

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LIDONG LIU,

Plaintiff,

v.

MICHAEL CHERTOFF, *et al.*,

Defendants.

No. C07-1474RSL

ORDER VACATING ORDER TO
SHOW CAUSE AND ORDER
REQUIRING DEFENDANTS TO FILE
MONTHLY STATUS REPORT

This matter comes before the Court *sua sponte*. On April 22, 2008, the Court ordered defendants by May 9, 2008, to provide the Court with particularized information why plaintiff's I-485 application for adjustment of status cannot be fully adjudicated. See Dkt. #18 at 20-21. On May 9, 2008, defendants responded to the Court's order and provided particularized information demonstrating that while plaintiff's name check was completed on March 28, 2008, plaintiff's application cannot be approved by United States Citizenship and Immigration Services ("USCIS") because no visa numbers are available for plaintiff. See Dkt. #19 (Defendant's Response to Order to Show Cause); Ex. A. (Second Heinauer Decl.) at ¶13; ¶14 ("Plaintiff's application for adjustment of status cannot be completed until a visa number is available and issued by the U.S. Department of State."). Significantly, the Department of State is not a party to this lawsuit.

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1 Plaintiff is applying for adjustment of status as a second preference worker from the
 2 People's Republic of China. See Dkt. #14 (Heinauer Decl.) at ¶6. Plaintiff's priority date for
 3 visa number purposes is September 13, 2004. Id. at ¶7; Dkt. #19 at (Second Heinauer Decl.) ¶6
 4 (stating "[t]he priority date for visa number purposes in Ms. Liu's case is September 13, 2004.").
 5 In the May 2008 visa bulletin, the cutoff date for second preference Chinese applicants was
 6 January 1, 2004. See Dkt. #19, Ex. A at ¶12; see also May 2008 visa bulletin, available at
 7 http://travel.state.gov/visa/frvi/bulletin/bulletin_4205.html. The Court takes judicial notice that
 8 in the June 2008 visa bulletin, the cutoff date has now progressed to April 1, 2004. See June
 9 2008 visa bulletin, available at http://travel.state.gov/visa/frvi/bulletin/bulletin_4231.html.

10 Given defendants' representation that plaintiff's case will be completed once a visa
 11 number becomes available to her,¹ coupled with the Court's conclusion that defendants cannot
 12 adjudicate plaintiff's application until a visa number is available, the Court orders as follows:

13 Based on defendants' May 9, 2008 filing (Dkt. #19), the Court VACATES the portion of
 14 the April 22, 2008 order requiring defendants to provide particularized information supporting
 15 their claim that plaintiff's application cannot be adjudicated. See Dkt. #18 at 20-21. However,
 16 the Court hereby ORDERS defendants on the **15th day of each month** to file a status report
 17 indicating: (1) whether a visa number is available for plaintiff; and if so, (2) whether USCIS has
 18 approved (fully adjudicated) plaintiff's I-485 application. This obligation shall continue until
 19 plaintiff's application is approved by USCIS. The Court DEFERS plaintiff's motion for
 20 summary judgment (Dkt. #13) until plaintiff's application is approved by USCIS.

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 23 ¹ See Dkt. #19, Ex. A at ¶18 ("A visa number is requested from the U.S. Department of State by
 24 the adjudicating officer at the moment a case is deemed to be finally approvable for adjustment of status.
 25 The visa number request and allocation is done electronically and is generally accomplished within a few
 26 hours. Plaintiff's case will be completed once a visa number becomes available to her.") (emphasis
 added).

1 DATED this 23rd day of May, 2008.

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4 Robert S. Lasnik
5 United States District Judge
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26 ORDER VACATING ORDER TO SHOW
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